

# **Exhibit 39**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
MASTER DOCKET 18-MD-2865 (LAK)  
CASE NO. 18-CV-09797

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IN RE: )  
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CUSTOMS AND TAX ADMINISTRATION OF )  
THE KINGDOM OF DENMARK )  
(SKATTEFORVALTNINGEN) TAX REFUND )  
SCHEME LITIGATION )  
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REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL  
EXAMINATION OF  
CHRISTIAN EKSTRAND - VOLUME I  
DATE: May 6, 2021

REPORTED BY: CHARLENE FRIEDMAN, CCR, RPR, CRR

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9 (Pages 30 to 33)

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| <p style="text-align: right;">Page 30</p> <p>1 THE WITNESS: Sorry.</p> <p>2 Q Did Accounting 2 have any control</p> <p>3 functions?</p> <p>4 MR. WEINSTEIN: Objection to form.</p> <p>5 A You can say that the way we were</p> <p>6 organized, it is an accounting department.</p> <p>7 But they were responsible for controlling and</p> <p>8 checking refunds of dividend withholding tax.</p> <p>9 Q When you say "they were responsible</p> <p>10 for controlling and checking refunds of</p> <p>11 dividend withholding tax," what do you mean?</p> <p>12 A I mean that when you claim refunds</p> <p>13 of dividend withholding tax, you must meet</p> <p>14 certain conditions and you have to document</p> <p>15 those requirements in connection with your</p> <p>16 claim for refund. But Accounting 2 checks</p> <p>17 with the claim board, including checking of</p> <p>18 the documents, very fine documenting that you</p> <p>19 are the beneficial owner or included in the</p> <p>20 claim or the application for refund.</p> <p>21 And the application of claim was</p> <p>22 rejected if the requirements were not met.</p> <p>23 Q During the time period of January</p> <p>24 2012 to August 2015, who was the head of</p> <p>25 Accounting 2?</p> | <p style="text-align: right;">Page 31</p> <p>1 A As I remember it, Lisbeth Rømer was</p> <p>2 the head of the department until October '13,</p> <p>3 approximately, when she retired, and Dorthe</p> <p>4 Pannerup took over the position.</p> <p>5 D-O-R-T-H-E, and last name, P-A-N-N-E-R-U-P.</p> <p>6 Q Do you know about how many</p> <p>7 employees Accounting 2 had during that</p> <p>8 period?</p> <p>9 A I don't know for the entire</p> <p>10 department exactly, but probably about a</p> <p>11 man count of 20, but if you're talking</p> <p>12 specifically about Accounting 2, it was five</p> <p>13 or six people.</p> <p>14 Q Did that stay consistent over the</p> <p>15 2012 to 2015 time period?</p> <p>16 A Yes, that was during that period.</p> <p>17 It could vary, too, because people might have</p> <p>18 stopped working and new employees come in.</p> <p>19 Q Were there budget cuts to</p> <p>20 Accounting 2 during the period 2005 to 2015?</p> <p>21 A Could you repeat the period?</p> <p>22 Apparently I got that wrong.</p> <p>23 You were asking about which period?</p> <p>24 Q 2005 to 2015.</p> <p>25 A Okay. I don't know about the</p>    |
| <p style="text-align: right;">Page 32</p> <p>1 specific budget cuts. But generally, there</p> <p>2 were budget cuts in the tax agency during</p> <p>3 that period.</p> <p>4 Q Were there complaints from</p> <p>5 personnel in Accounting 2 about a lack of</p> <p>6 resources?</p> <p>7 MR. WEINSTEIN: Objection to form.</p> <p>8 Are you talking about for a ten-year period?</p> <p>9 MR. SCHOENFELD: Correct.</p> <p>10 MR. WEINSTEIN: Objection to form.</p> <p>11 A I don't think I can answer</p> <p>12 specifically, but as in all instances of</p> <p>13 SKAT, there was some frustration about</p> <p>14 resources during the period.</p> <p>15 Q Who is Sven Neilsen?</p> <p>16 A He was an employee of Accounting 2.</p> <p>17 Q During what time period?</p> <p>18 A He was employed during the period</p> <p>19 you're asking about. If you want the</p> <p>20 specific period, I don't have that, but I can</p> <p>21 look it up.</p> <p>22 Q During that time period, what were</p> <p>23 Sven's responsibilities?</p> <p>24 A He was responsible for handling the</p> <p>25 reclaims and for entering them into the 3S</p>  | <p style="text-align: right;">Page 33</p> <p>1 system.</p> <p>2 Q Was anyone other than Sven Nielsen</p> <p>3 responsible for handling reclaims?</p> <p>4 A Well, there were other employees.</p> <p>5 There was a person called Laurits Cramer who</p> <p>6 was -- generally, he was opening the mailing</p> <p>7 and sorting it.</p> <p>8 And there were two ladies who did</p> <p>9 some inputs in the system, but it was</p> <p>10 generally Sven who did it.</p> <p>11 Q Was Sven's work in processing</p> <p>12 reclaims subject to any auditing?</p> <p>13 MR. WEINSTEIN: Objection to form.</p> <p>14 A I don't understand the question, so</p> <p>15 could you ask it again? Rephrase it, please?</p> <p>16 Q Did anyone in Accounting 2 or in</p> <p>17 Payments and Accounting have responsibility</p> <p>18 for auditing Sven's work in approving or</p> <p>19 rejecting reclaim applications?</p> <p>20 MR. WEINSTEIN: Objection to form.</p> <p>21 A I don't know if anybody was</p> <p>22 responsible for auditing Sven's work, but</p> <p>23 when you're talking about payments of</p> <p>24 disbursements, there's a functional</p> <p>25 separation as always.</p> |

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18 (Pages 66 to 69)

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| <p style="text-align: right;">Page 66</p> <p>1 there being any further investigation or<br/>2 pushback on the explanation?<br/>3 MR. WEINSTEIN: Objection to the<br/>4 form.<br/>5 A I base my reply on the fact that I<br/>6 don't know whether further investigations<br/>7 were made.<br/>8 Q Do you know whether there was any<br/>9 discussion within SKAT about steps it could<br/>10 take to learn more about the U.S. pension<br/>11 plans investing in Danish companies?<br/>12 MR. WEINSTEIN: Objection to form.<br/>13 A It's not something I know for<br/>14 certain, that I haven't heard that such<br/>15 discussions took place.<br/>16 Q Did SKAT consider asking the<br/>17 American pension plans for more information<br/>18 about their investments or refund<br/>19 applications?<br/>20 MR. WEINSTEIN: Objection to form.<br/>21 A No, I don't know.<br/>22 Q Mr. Ekstrand, you testified<br/>23 earlier -- sorry. Was that someone talking?<br/>24 Okay.<br/>25 Mr. Ekstrand, you testified earlier</p> | <p style="text-align: right;">Page 67</p> <p>1 that you were familiar with reports from SIR,<br/>2 SKAT's internal audit department.<br/>3 Is that right?<br/>4 A Yes. I know that SIR has made the<br/>5 reports on this area.<br/>6 Q And SIR concluded in 2015 that the<br/>7 explanations given in these accounting<br/>8 reports, their plausibility checks, were not<br/>9 adequate, correct?<br/>10 MR. WEINSTEIN: Sorry. Just one<br/>11 second now. We're having some background<br/>12 noise that should stop in about ten seconds.<br/>13 A Could you please tell me where in<br/>14 the report I should find the conclusion?<br/>15 Q Sure.<br/>16 MR. WEINSTEIN: Sure. Also, Alan,<br/>17 just so you know, I think it's 3:00 p.m.<br/>18 here. There was going to be a shift in<br/>19 interpreters. I know the second interpreter<br/>20 is here.<br/>21 MR. SCHOENFELD: Okay. Let me just<br/>22 finish this question.<br/>23 Q So Mr. Ekstrand, if you go to<br/>24 Exhibit 3007? And if you look at the bottom<br/>25 right-hand corner of each page, they have a</p> |
| <p style="text-align: right;">Page 68</p> <p>1 number.<br/>2 And I'm referring to the page<br/>3 ending 898 in Exhibit 3007.<br/>4 THE INTERPRETER: 898?<br/>5 MR. SCHOENFELD: 898.<br/>6 (Above-mentioned document marked<br/>7 for Identifications.)<br/>8 Q So are you with me at Page 64 of<br/>9 123 of the document, Bates 898?<br/>10 A Yes.<br/>11 Q And you see the last paragraph on<br/>12 the page beginning "SKAT foretager?"<br/>13 A Yes.<br/>14 Q And does SIR conclude in that<br/>15 paragraph that there was an inefficiently<br/>16 critical appraisal of the causal explanations<br/>17 offered in these accounting reports?<br/>18 THE INTERPRETER: Can you repeat<br/>19 the question?<br/>20 Q The explanation for the increases?<br/>21 A He says that -- he also says that<br/>22 based on the listing basis of documentation<br/>23 that was in the critical conclusion. The<br/>24 report was issued in 2015 and it's after we<br/>25 got the information that we had been</p>                     | <p style="text-align: right;">Page 69</p> <p>1 defrauded, and that the main reason for<br/>2 the -- or the main background for the fraud<br/>3 was that U.S. pension plans had incorrectly<br/>4 claimed refund amounts.<br/>5 And in my view, the conclusion is<br/>6 made in hindsight based on the information<br/>7 that they have at that time.<br/>8 Q Okay.<br/>9 MR. SCHOENFELD: Why don't we take<br/>10 a break and swap out translators.<br/>11 VIDEO OPERATOR: Stand by. The<br/>12 time the 9:05 a.m. New York time and we're<br/>13 going off the record.<br/>14<br/>15 K R I S T E N F O L L I N,<br/>16 Called as the official interpreter in<br/>17 this action, was duly sworn to faithfully translate<br/>18 the questions to the witness from English to<br/>19 Danish, and the answers from Danish to English.<br/>20<br/>21 VIDEO OPERATOR: The time is 9:21<br/>22 a.m. New York time and we're back on record.<br/>23 Q Mr. Ekstrand, SKAT is the agency of<br/>24 the Danish government charged with the<br/>25 assessment and collection of Danish taxes,</p> |

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19 (Pages 70 to 73)

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| <p style="text-align: right;">Page 70</p> <p>1 correct?</p> <p>2     <b>A</b>    Yes.</p> <p>3     <b>Q</b>    And among the taxes that SKAT</p> <p>4 collects, it collects dividend withholding</p> <p>5 tax, correct?</p> <p>6     <b>A</b>    Yes.</p> <p>7     <b>Q</b>    And when SKAT pays out dividend</p> <p>8 withholding tax refunds, it uses tax revenues</p> <p>9 to make those payments, correct?</p> <p>10     <b>MR. WEINSTEIN:</b> Objection.</p> <p>11     <b>A</b>    So when there is dividend</p> <p>12 withholding tax, then that is -- those are</p> <p>13 the funds you can have -- invest.</p> <p>14     <b>Q</b>    So the money SKAT's seeking to</p> <p>15 recover in this case represents tax revenue</p> <p>16 wrongly paid out to claimants, correct?</p> <p>17     <b>MR. WEINSTEIN:</b> Objection to form.</p> <p>18     <b>A</b>    To my knowledge, we have filed a</p> <p>19 suit to recover funds that we have wrongly</p> <p>20 paid out.</p> <p>21     <b>MR. WEINSTEIN:</b> Alan, I'll also</p> <p>22 just note that if you're asking about</p> <p>23 subjects 15 -- I'm sorry, 16 and 17 in the</p> <p>24 30(b)(6) notice, we had designated another</p> <p>25 witness as SKAT's witness on those subjects.</p> | <p style="text-align: right;">Page 71</p> <p>1 He's already testified.</p> <p>2     These questions are not within the</p> <p>3 notice that we designated Mr. Ekstrand to</p> <p>4 cover.</p> <p>5     <b>MR. SCHOENFELD:</b> Okay. To the</p> <p>6 extent he knows the answer to these</p> <p>7 questions, he can answer them in his</p> <p>8 individual capacity.</p> <p>9     <b>Q</b>    Mr. Ekstrand, there -- during the</p> <p>10 relevant time period, there were different</p> <p>11 ways to obtain a reclaim of dividend</p> <p>12 withholding tax, correct?</p> <p>13     <b>A</b>    Yes.</p> <p>14     <b>Q</b>    There was something called the</p> <p>15 "bank scheme," right?</p> <p>16     <b>THE INTERPRETER:</b> Excuse me? What,</p> <p>17 sir?</p> <p>18     <b>Q</b>    There was something called the</p> <p>19 "bank scheme?"</p> <p>20     <b>A</b>    Yes.</p> <p>21     <b>Q</b>    And then there was something called</p> <p>22 the "form scheme," right?</p> <p>23     <b>A</b>    Yes.</p> <p>24     <b>Q</b>    And the "form scheme" just means</p> <p>25 that the party requesting the reclaim</p>                     |
| <p style="text-align: right;">Page 72</p> <p>1 completes the form that we looked at earlier,</p> <p>2 correct?</p> <p>3     <b>MR. WEINSTEIN:</b> Objection.</p> <p>4     <b>A</b>    In order to be -- to be part of the</p> <p>5 form scheme, we -- you have to fill out the</p> <p>6 form that I referred to earlier and attach</p> <p>7 relevant documentation.</p> <p>8     <b>Q</b>    And that form had to be submitted</p> <p>9 to SKAT, correct?</p> <p>10     <b>A</b>    Yes.</p> <p>11     <b>Q</b>    The taxpayer couldn't submit that</p> <p>12 form to some other part of the Danish</p> <p>13 government, right?</p> <p>14     <b>A</b>    SKAT is the relevant recipient of</p> <p>15 that form.</p> <p>16     <b>Q</b>    The claimant couldn't submit that</p> <p>17 form to the issuer of the securities, right?</p> <p>18     <b>A</b>    No.</p> <p>19     <b>Q</b>    And after receiving the form, SKAT</p> <p>20 makes a decision about whether or not to pay</p> <p>21 the refund, right?</p> <p>22     <b>A</b>    Once the form has been received,</p> <p>23 checks are made to see that the conditions</p> <p>24 for receiving payment are met before payment</p> <p>25 is made.</p>                                       | <p style="text-align: right;">Page 73</p> <p>1     <b>Q</b>    And SKAT is the agency that makes</p> <p>2 that decision whether to pay the refunds,</p> <p>3 correct?</p> <p>4     <b>A</b>    Yes.</p> <p>5     <b>Q</b>    There's no other part of the Danish</p> <p>6 government that can approve these refunds,</p> <p>7 right?</p> <p>8     <b>A</b>    No.</p> <p>9     <b>Q</b>    VP Securities can't provide the</p> <p>10 refund, right?</p> <p>11     <b>A</b>    I'm not sure I understand the</p> <p>12 question.</p> <p>13     <b>Q</b>    So I think you testified that in</p> <p>14 order to get a refund of dividend withholding</p> <p>15 tax, the application needs to be submitted to</p> <p>16 SKAT, correct?</p> <p>17     <b>A</b>    Yes.</p> <p>18     <b>Q</b>    And so am I correct that</p> <p>19 VP Securities is not itself able to pay a</p> <p>20 refund out to a shareholder?</p> <p>21     Is that right?</p> <p>22     <b>A</b>    Correct.</p> <p>23     <b>Q</b>    And a U.S. pension plan owning</p> <p>24 shares of a Danish company couldn't require</p> <p>25 that company to pay its dividend on a gross</p> |

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20 (Pages 74 to 77)

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|---|--|
| <p style="text-align: right;">Page 74</p> <p>1 basis without withholding, correct?</p> <p>2 MR. WEINSTEIN: Objection to form.</p> <p>3 THE INTERPRETER: Can I just ask</p> <p>4 you to repeat the question, please? That the</p> <p>5 U.S. pension plan --</p> <p>6 Q A U.S. pension plan owning shares</p> <p>7 in a Danish company couldn't require that</p> <p>8 company to pay its dividend on a gross basis</p> <p>9 without withholding, correct?</p> <p>10 MR. WEINSTEIN: Objection.</p> <p>11 A No. And maybe we just need to</p> <p>12 understand the process because it is not the</p> <p>13 company handling the payment. So -- and we</p> <p>14 need to understand the process.</p> <p>15 This is not handled by</p> <p>16 VP Securities. The company itself are the</p> <p>17 ones who would hold the amount that they will</p> <p>18 pay as dividends.</p> <p>19 Subsequently, VP Securities will</p> <p>20 make a calculation to see how much is to be</p> <p>21 paid in dividend and how much is to be</p> <p>22 withhold for taxes. And then, subsequently,</p> <p>23 the funds will be paid out to the relevant</p> <p>24 parties as well and the taxes will be</p> <p>25 withheld.</p>                                   | <p style="text-align: right;">Page 75</p> <p>1 And the relevant dividend</p> <p>2 recipients are the ones that are known to VP.</p> <p>3 Q A U.S. pension plan can't say to</p> <p>4 the company, the Danish company issuing the</p> <p>5 dividend, "I don't want to deal with the</p> <p>6 refund process, just pay me a gross</p> <p>7 dividend," correct?</p> <p>8 MR. WEINSTEIN: Objection to form.</p> <p>9 A No.</p> <p>10 Q No, it can't, correct?</p> <p>11 A No, it cannot.</p> <p>12 Q Okay. So in this case, SKAT</p> <p>13 received the defendant's refund applications,</p> <p>14 right?</p> <p>15 A Yes.</p> <p>16 Q And SKAT reviewed those</p> <p>17 applications, right?</p> <p>18 A Yes.</p> <p>19 Q And SKAT made the decision to pay</p> <p>20 out withheld dividend tax to the pension plan</p> <p>21 in each of these cases, correct?</p> <p>22 A Yes. SKAT went through the</p> <p>23 documentation that we have received.</p> <p>24 And upon this review, we have</p> <p>25 decided to refund the amounts.</p>   |
| <p style="text-align: right;">Page 76</p> <p>1 Q And SKAT determined that each</p> <p>2 claimant was subject to a double taxation</p> <p>3 treaty, correct?</p> <p>4 A Yes. Because the claimant has</p> <p>5 included documentation as to where they are</p> <p>6 taxable, that they are domiciled in the U.S.</p> <p>7 and are obligated to pay taxes in the U.S.</p> <p>8 Q I think you testified earlier that</p> <p>9 there's an operative definition of</p> <p>10 "beneficial owner" within SKAT.</p> <p>11 Is that right?</p> <p>12 A What I said was that you had to be</p> <p>13 the rightful owner of the shares in order to</p> <p>14 claim a refund. But one of the conditions</p> <p>15 also is that you, in actuality, are domiciled</p> <p>16 at a location where we have a double taxation</p> <p>17 agreement so that there is taxes to refund.</p> <p>18 Q Right. I'm focused on this</p> <p>19 question of the rightful owner.</p> <p>20 I believe you testified earlier</p> <p>21 that there's a definition that SKAT applies</p> <p>22 to determine whether someone is the rightful</p> <p>23 beneficial owner of the dividends for</p> <p>24 purposes of processing these refund</p> <p>25 applications, correct?</p> | <p style="text-align: right;">Page 77</p> <p>1 MR. WEINSTEIN: Objection to form.</p> <p>2 Misstates his testimony.</p> <p>3 A So as I mentioned earlier, we have</p> <p>4 a -- legal guidelines, including the</p> <p>5 definition. And I also said earlier that if</p> <p>6 you want an elaboration of the concept</p> <p>7 "beneficial owner," I'm not the right person</p> <p>8 to ask.</p> <p>9 Q But in approving the refund claims,</p> <p>10 SKAT determined that the claimant was a</p> <p>11 beneficial owner under SKAT's guidelines for</p> <p>12 determination of who's the beneficial owner,</p> <p>13 correct?</p> <p>14 A The control is performed by SKAT of</p> <p>15 the documentation that the person in question</p> <p>16 is the beneficial owner. And why would we</p> <p>17 then think otherwise, since we receive a</p> <p>18 declaration to that effect as well as</p> <p>19 documentation of the domicile of the entity</p> <p>20 in question?</p> <p>21 And we also received dividend</p> <p>22 credit advice saying that the entity in</p> <p>23 question has received a dividend, and that</p> <p>24 there is -- and that taxes have been</p> <p>25 withheld.</p> |



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| <p style="text-align: right;">Page 98</p> <p>1 paid on a balance principle and not<br/>2 separately accounted."<br/>3 MR. WEINSTEIN: Objection to form.<br/>4 A Yes, I will try.<br/>5 So the company had one tax account,<br/>6 which is what I said earlier. So once there<br/>7 is an amount outstanding and there is a<br/>8 payment deadline, this will be recorded in<br/>9 your account as an amount due.<br/>10 So if you do not pay the amount,<br/>11 then the amount remains in the account. And<br/>12 then -- so then, again, with the example of<br/>13 the 50 million, there are -- you have the<br/>14 50 million that is withholding tax,<br/>15 50 million, something other taxes, and<br/>16 100 million in total -- these amounts will<br/>17 afford you, in succession, and that<br/>18 was -- stand up in your account, then<br/>19 obviously, if there are any credits or<br/>20 whatever due, then that will be -- offset<br/>21 this amount and then you will have to pay the<br/>22 remaining amount.<br/>23 But if you had no other taxes to<br/>24 pay other than your withholding, this tax<br/>25 would be in your account and then due. So in</p>  | <p style="text-align: right;">Page 99</p> <p>1 my mind, my thinking is the same as well as<br/>2 stated in the text that we read out loud.<br/>3 Q So let's say that on January 1st,<br/>4 you've got 50 million kroner in tax credits<br/>5 in your account, and 50 million kroner in<br/>6 dividend withholding taxes is due to SKAT on<br/>7 January 10th.<br/>8 Do you have that in mind?<br/>9 A Just to -- just to check, are you<br/>10 saying that 50 million outstanding plus<br/>11 50 million withholding tax, or both amounts<br/>12 due, or did you say 50 million tax credit and<br/>13 50 million withholding tax?<br/>14 Q 50 million tax credit in the<br/>15 account on the day that 50 million in<br/>16 withholding tax is due to be paid to SKAT.<br/>17 A So they even each other out, and<br/>18 then, of course, you do not have to pay<br/>19 50 million.<br/>20 Q Right. So on the date that the<br/>21 company is obligated to remit the withholding<br/>22 tax to SKAT, it doesn't actually pay any<br/>23 money to SKAT, correct?<br/>24 MR. WEINSTEIN: Objection to form.<br/>25 A These are amounts that fall due, so</p> |
| <p style="text-align: right;">Page 100</p> <p>1 they are obligated to pay the 50 million. So<br/>2 in itself, it didn't change anything.<br/>3 Q The company in this example has<br/>4 still paid its withholding tax, right?<br/>5 A Yes, because they have a tax credit<br/>6 of 50 million and they have to pay<br/>7 withholding tax of 50 million.<br/>8 So those amounts even out each<br/>9 other, and so then the account is zero.<br/>10 Q And so is it fair to say, as a<br/>11 result of this netting process, SKAT doesn't<br/>12 have any direct evidence that the company has<br/>13 remitted withholding tax to the agency?<br/>14 MR. WEINSTEIN: Objection to form.<br/>15 A I'm not sure I understand the<br/>16 reasoning, because they have the tax credit<br/>17 of 50 million. Then they have to pay<br/>18 resulting taxes of 50 million.<br/>19 So the money is still paid.<br/>20 Q But there's no evidence<br/>21 of -- there's no -- nothing SKAT can point to<br/>22 to show the actual payment of the withholding<br/>23 tax, right? It's just obligations and<br/>24 liabilities netted in the account?<br/>25 MR. WEINSTEIN: Objection to form.</p> | <p style="text-align: right;">Page 101</p> <p>1 A So I still don't understand the<br/>2 reasoning behind your argument, because there<br/>3 may not be something specific you can point<br/>4 to, but they had to pay withholding tax of<br/>5 50 million.<br/>6 Then they had a tax credit that is<br/>7 offset against the payment. So they still<br/>8 make their payment.<br/>9 Q But there won't be a bank receipt<br/>10 or a SWIFT confirm for the payment of the<br/>11 withholding tax, correct?<br/>12 A No, because there was no bank<br/>13 transfer.<br/>14 Q Okay.<br/>15 MR. SCHOENFELD: Do you want to<br/>16 take a short break now?<br/>17 MR. WEINSTEIN: Sure.<br/>18 VIDEO OPERATOR: Please stand by.<br/>19 The time is 10:24 a.m. New York time, and<br/>20 we're going off the record.<br/>21 (Brief recess taken.)<br/>22 VIDEO OPERATOR: The time is<br/>23 10:40 a.m. New York time and we're back on<br/>24 record.<br/>25 Q Mr. Ekstrand, what's the name of</p>   |



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| <p style="text-align: right;">Page 102</p> <p>1 the department that Ms. Ahlefeld-Engel is in<br/>2 charge of?</p> <p>3 THE INTERPRETER: So this is from<br/>4 the interpreter. The names are in Danish.<br/>5 Are you looking for the Danish names or the<br/>6 translation of the Danish names?</p> <p>7 MR. SCHOENFELD: The translation of<br/>8 the Danish name would be great.</p> <p>9 A She is a VP of either Special<br/>10 Control or Special Verification. Let me<br/>11 repeat. Sorry.<br/>12 She's deputy director of Special<br/>13 Control or Special Verification.</p> <p>14 Q Do you have a reporting<br/>15 relationship into her?</p> <p>16 A I did have a reporting relationship<br/>17 with her because she was the deputy director<br/>18 of complex role, so through my supervisor.</p> <p>19 Q You said you "did."<br/>20 Do you not now?</p> <p>21 A So I do not have a direct reporting<br/>22 relationship with her, but since she, under<br/>23 the Danish tax authorities, is the one<br/>24 responsible for the withholding tax case,<br/>25 then I have an indirect reporting</p> | <p style="text-align: right;">Page 103</p> <p>1 relationship with her.</p> <p>2 Q Okay. So Mr. Ekstrand, if you<br/>3 could take out Exhibit 3061?<br/>4 (Above-mentioned document marked<br/>5 for Identification.)</p> <p>6 Q Do you have that document in front<br/>7 of you?</p> <p>8 A Yes.</p> <p>9 Q It's a little hard to read, so I<br/>10 apologize, and we'll work through it<br/>11 together.</p> <p>12 Do you recognize this document?</p> <p>13 A Yes. This is a withholding tax<br/>14 reporting from Novo Nordisk.</p> <p>15 Q And was it generated by a SKAT<br/>16 system?</p> <p>17 A So based on the period where this<br/>18 was reported to -- to SKAT, it would seem<br/>19 that this has been done through the<br/>20 self-service options.</p> <p>21 Q The self-service option within 3S.<br/>22 Is that right?</p> <p>23 A So the set of service options are<br/>24 not part of 3S. The self-service that I'm<br/>25 referring to is a self-service portal, for</p>  |
| <p style="text-align: right;">Page 104</p> <p>1 lack of a better word, where you would then<br/>2 input the information yourself.</p> <p>3 But then, eventually, whatever<br/>4 information is inputted through this<br/>5 self-service platform will end up in 3S.</p> <p>6 Q Okay. Is this the screenshot of<br/>7 the 3S system?</p> <p>8 A Yes.</p> <p>9 Q And so it's your testimony that the<br/>10 information reflected in this screenshot was<br/>11 provided directly by Novo Nordisk.</p> <p>12 Is that right?</p> <p>13 A Yes, but based on information from<br/>14 VP, but yes.</p> <p>15 Q Explain what that means.</p> <p>16 A So, as I mentioned before, VP<br/>17 handles distribution of the dividends. Once<br/>18 that process is over -- so once that process<br/>19 is over, VP prepares a -- a settlement -- a<br/>20 settlement which then forms the basis of the<br/>21 company's reporting of the full dividend<br/>22 amount.</p> <p>23 Q Does SKAT do anything -- or during<br/>24 the time period, did SKAT do anything to<br/>25 confirm the accuracy of this information?</p>   | <p style="text-align: right;">Page 105</p> <p>1 A No. So what was done on several<br/>2 occasions was that they -- when they prepared<br/>3 this sort of settlement, there is an area on<br/>4 this where it says the Danish word<br/>5 "regnskab," which means "accounts."<br/>6 R-E-G-N-S-K-A-B, one word.</p> <p>7 So now we are getting a bit<br/>8 technical. So the amount dated in this<br/>9 section comes from the company's tax return.<br/>10 Okay.</p> <p>11 So that -- the amount under the<br/>12 heading "Regnskab Account" should be<br/>13 identical with whatever amount is listed<br/>14 here. The last one of this, I think the<br/>15 ninth gray box, so the amount here -- I don't<br/>16 know if you can see where I'm pointing -- so<br/>17 this amount here should match the amount here<br/>18 in the last gray box.</p> <p>19 Q This is the system that SKAT uses<br/>20 to determine whether companies have paid the<br/>21 correct amount of dividend withholding tax,<br/>22 correct?</p> <p>23 MR. WEINSTEIN: Objection to form.</p> <p>24 A This is the system available to us<br/>25 to verify the amount reported to us by the</p> |

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| <p style="text-align: right;">Page 106</p> <p>1 company. And that amount can then be<br/>2 compared to the amount stated in the tax<br/>3 return when they provide that information.<br/>4 <b>Q</b> Under the heading "Udlodning" -- do<br/>5 you want me to spell it?<br/>6 <b>MR. SCHOENFELD:</b> Sure.<br/>7 <b>THE INTERPRETER:</b> It's<br/>8 U-D-L-O-D-N-I-N-G.<br/>9 <b>Q</b> So the seventh item down starts<br/>10 with the word "dispensation."<br/>11 Do you see that?<br/>12 <b>A</b> Yes.<br/>13 <b>Q</b> And that refers to dividends paid<br/>14 with zero in deductions, correct?<br/>15 <b>A</b> Yes.<br/>16 <b>Q</b> When does a company pay dividends<br/>17 without any deduction for withholding tax?<br/>18 <b>A</b> So there are certain situations,<br/>19 and I cannot remember them right now, but you<br/>20 can apply to SKAT for a dispensation for<br/>21 various specific shares. And this does not<br/>22 apply to American pension plans, so anything<br/>23 like that.<br/>24 And I cannot -- I can find out<br/>25 specifically for you what that entails. But</p>  | <p style="text-align: right;">Page 107</p> <p>1 right here, right now, this is the best<br/>2 answer that I can give you.<br/>3 <b>Q</b> But apart from shares given this<br/>4 dispensation, dividend withholding tax is due<br/>5 on all other share -- on all other dividends<br/>6 issued by the company, correct?<br/>7 <b>A</b> So there are other situations where<br/>8 this might be the case. I think the next<br/>9 line is where you would have a situation, for<br/>10 example, involving a parent company and a<br/>11 subsidiary.<br/>12 But in general, yes, they all have<br/>13 to pay dividend withholding tax.<br/>14 <b>Q</b> Okay. And so, the final<br/>15 line -- the final box in the column called<br/>16 "SKAT," does that show the amount of dividend<br/>17 withholding tax SKAT expects to receive from<br/>18 this company in respect to this particular<br/>19 dividend issuance?<br/>20 <b>THE INTERPRETER:</b> Sorry. Can you<br/>21 repeat the question?<br/>22 <b>MR. SCHOENFELD:</b> Sure.<br/>23 <b>Q</b> So the final box in the column<br/>24 called "SKAT," does that show the amount of<br/>25 dividend withholding tax SKAT expects to</p> |
| <p style="text-align: right;">Page 108</p> <p>1 receive from this company in respect of this<br/>2 particular dividend issuance?<br/>3 <b>A</b> Yes. The final box is the sum of<br/>4 the taxes above.<br/>5 So yes, that is the total tax<br/>6 amount.<br/>7 <b>Q</b> And that amount is based on<br/>8 calculations driven by the data in the column<br/>9 called "U-D-B-Y-T-T-E" or "Dividend," right?<br/>10 <b>MR. WEINSTEIN:</b> Objection.<br/>11 <b>A</b> So that depends on the reporting<br/>12 made of a dividend. So the reporting of the<br/>13 dividend is divided into tax brackets, but<br/>14 that this will end up on the reporting form.<br/>15 <b>Q</b> And between 2012 and 2015, did SKAT<br/>16 do anything to check the accuracy of the data<br/>17 that was reported by these companies?<br/>18 <b>A</b> No.<br/>19 <b>Q</b> The third row, the column called<br/>20 "Udbytte," it refers to dividend tax subject<br/>21 to double taxation agreements, correct?<br/>22 <b>A</b> Yes.<br/>23 <b>Q</b> And it indicates less than<br/>24 9 million kroner in dividends were subject to<br/>25 double taxation agreements, correct?</p> | <p style="text-align: right;">Page 109</p> <p>1 <b>A</b> Yes, if it says 9 million, then<br/>2 it's 9 million. I'm unable to read where it<br/>3 says 9 million.<br/>4 But yes, if that's what it says.<br/>5 And that comes from the VP scheme.<br/>6 <b>Q</b> So I read it to state 8,917,915.<br/>7 Is that how you read it?<br/>8 <b>THE INTERPRETER:</b> Please say that<br/>9 again? The amount again?<br/>10 <b>Q</b> 8,917,915.<br/>11 <b>A</b> Well, if that's what you would say,<br/>12 I can't see it.<br/>13 <b>Q</b> Okay. Mr. Ekstrand, you said that<br/>14 comes from the "VP scheme."<br/>15 Can you explain what you mean<br/>16 there?<br/>17 <b>A</b> So you mentioned earlier that we<br/>18 had several schemes. There was also<br/>19 something called the "net withholding<br/>20 scheme." And this was handled by VP, which<br/>21 is why it's called the "VP scheme."<br/>22 <b>Q</b> Does that figure state the total<br/>23 value of dividends that were subject to<br/>24 double taxation agreements?<br/>25 <b>THE INTERPRETER:</b> Can I ask you to</p>   |

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| <p style="text-align: right;">Page 110</p> <p>1 repeat that? There was a problem with the<br/>2 sound.<br/>3 MR. SCHOENFELD: Sure.<br/>4 Q Does that figure state the total<br/>5 value of dividends that were subject to<br/>6 double taxation agreements?<br/>7 A So this only refers to the<br/>8 companies under the VP scheme and<br/>9 whatever — and whatever exemptions to which<br/>10 they were entitled and where they were<br/>11 subject — and whatever exemptions they were<br/>12 awarded under double taxation.<br/>13 This is only a — this only applies<br/>14 to a natural passing.<br/>15 Q As distinguished from a corporate<br/>16 entity?<br/>17 A Yes. They cannot — a corporate<br/>18 entity cannot be part of the scheme.<br/>19 Q Is there any other field on this<br/>20 chart that shows dividends paid by Novo<br/>21 Nordisk subject to a double taxation treaty?<br/>22 A No.<br/>23 Q Okay. The total amount — the<br/>24 total value of dividends paid is over<br/>25 10 billion kroner, correct?</p>  | <p style="text-align: right;">Page 111</p> <p>1 A Yes.<br/>2 Q So the amount of dividends listed<br/>3 as subject to double taxation agreements is<br/>4 less than one percent of the total value of<br/>5 dividends paid, correct?<br/>6 MR. WEINSTEIN: Objection. That<br/>7 completely misstates what he just explained<br/>8 to you for the past five minutes.<br/>9 Q Am I correct that — am I correct<br/>10 that the only field on this chart showing<br/>11 dividends paid subject to double taxation is<br/>12 the one starting on the — is the one on the<br/>13 third line?<br/>14 Do I have that right?<br/>15 A So it is correct that it<br/>16 has — that the text does reflect that. But<br/>17 this only refers to the VP scheme and nothing<br/>18 else.<br/>19 Q So where else — in what other<br/>20 field here would dividends subject to double<br/>21 taxation treaties be reflected?<br/>22 MR. WEINSTEIN: Objection to form.<br/>23 A So the present rule, if you are a<br/>24 non-Danish professional owning shares held by<br/>25 a custodian bank and not Danish custodian</p> |
| <p style="text-align: right;">Page 112</p> <p>1 bank, then, as a rule, you will be — taxes<br/>2 will be added of 27 percent.<br/>3 If you were a part of a double<br/>4 taxation arrangement and you had to pay less<br/>5 than that, then that will be taken from the<br/>6 relevant tax bracket, and that is the first<br/>7 box or part of this. And if you see, in the<br/>8 column that is — that says "Percentage" in<br/>9 Danish, "Procent," it says "27" in the first<br/>10 box.<br/>11 Q So that first box taxed at<br/>12 27 percent, does that represent all<br/>13 non-Danish holders of Novo Nordisk stock?<br/>14 A No. This reflects anybody who has<br/>15 paid 27 percent, and that could also include<br/>16 Danish individuals.<br/>17 Q Okay. Let's turn to Exhibit 3026.<br/>18 (Above-mentioned document marked<br/>19 for Identification.)<br/>20 Q Actually, before we look at that,<br/>21 let's just go back to Exhibit 3061 for a<br/>22 second.<br/>23 Mr. Ekstrand, what was the date<br/>24 this dividend was paid?<br/>25 A So this was made — this was</p> | <p style="text-align: right;">Page 113</p> <p>1 decided on March 19, 2015. That was the<br/>2 day — this was on the day of the general<br/>3 meeting and on — this was March 19, 2015.<br/>4 Two days later was the record date,<br/>5 and then payment would follow soon<br/>6 thereafter. Obviously, I do not know what<br/>7 day of the week, what day these dates were.<br/>8 You know, it depends on whether one<br/>9 was a Saturday and so that delays the<br/>10 process, but yeah.<br/>11 Q And this was the dividend paid for<br/>12 2014 profits?<br/>13 A Yes.<br/>14 [REDACTED]<br/>15 [REDACTED]<br/>16 [REDACTED]<br/>17 [REDACTED]<br/>18 Q So if you look at Exhibit 3026, you<br/>19 see that this is Novo's 2015 annual report,<br/>20 right?<br/>21 A Yes.<br/>22 Q And if you turn to Page 59?<br/>23 Tell me when you're there.<br/>24 A Yes, I have Page 59 here.<br/>25 Q Okay. Do you see that, for 2015,</p>  |

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| <p style="text-align: right;">Page 114</p> <p>1 it reports dividends issued of 12.9 billion?</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q I apologize.</p> <p>5 In 2015, dividends are issued of</p> <p>6 12.9 billion, correct?</p> <p>7 A Yes.</p> <p>8 Q And that's 3 billion more than we</p> <p>9 saw in the 3S screen, correct?</p> <p>10 A Yes.</p> <p>11 Q Do you know which of these is</p> <p>12 correct? Do you know which of these</p> <p>13 correctly states the amount of dividends Novo</p> <p>14 issued in 2015?</p> <p>15 A So all I can say is that this is</p> <p>16 the dividend reporting that they have made.</p> <p>17 If we are to go into detail with this, we</p> <p>18 would need to be able to go through the</p> <p>19 various lines of the accounts.</p> <p>20 Q Well, we're just comparing two</p> <p>21 fields, the total dividends reflected in the</p> <p>22 annual report, and the dividend reflected in</p> <p>23 the 3S report.</p> <p>24 A If we have information from their</p> <p>25 general meeting, we don't have that</p>   | <p style="text-align: right;">Page 115</p> <p>1 information here. But that would include</p> <p>2 information about the total amount of</p> <p>3 dividends, dividends that they are paid, and</p> <p>4 what is the number of shares that they have</p> <p>5 issued. And we would need that information</p> <p>6 in order to compare the two.</p> <p>7 And the screenshot, also, you need</p> <p>8 to keep in mind, is dividend reporting that</p> <p>9 they have made as of March of 2015. The</p> <p>10 annual report is dated December 31, 2015.</p> <p>11 So whatever discrepancies there may</p> <p>12 be between the two is difficult to say. But</p> <p>13 if you want me to do this -- if you want me</p> <p>14 to, I'm happy to go into -- I'm happy to look</p> <p>15 into this and give you a more detailed</p> <p>16 description.</p> <p>17 Q In the period of 2012 to 2015, did</p> <p>18 SKAT make any effort to reconcile large</p> <p>19 companies' publicly reported information</p> <p>20 about dividend issuance with information</p> <p>21 obtained from the companies and reflected</p> <p>22 in 3S?</p> <p>23 A We have within SKAT a unit called</p> <p>24 "Transmitted Big Companies." And that unit</p> <p>25 verifies, as the name indicates, big</p> |
| <p style="text-align: right;">Page 116</p> <p>1 companies.</p> <p>2 So whether Novo Nordisk at</p> <p>3 this -- during this period came under</p> <p>4 scrutiny, I cannot say whether</p> <p>5 they -- their -- whether their figures were</p> <p>6 verified in any way. They do spot checks to</p> <p>7 verify what companies have reported.</p> <p>8 I can't say whether that is based</p> <p>9 on a random selection or whatever criteria</p> <p>10 they have applied in their selection within</p> <p>11 this unit. But if Novo Nordisk were selected</p> <p>12 for control, then that is part of the -- of</p> <p>13 what the unit "Big Companies" do to check</p> <p>14 this.</p> <p>15 Q If there's an additional dividend</p> <p>16 paid by Novo Nordisk in 2015, would a</p> <p>17 separate 3S screenshot be available for that</p> <p>18 dividend?</p> <p>19 A There would be. I mean, you</p> <p>20 can -- you can submit corrections to the</p> <p>21 reporting you have made.</p> <p>22 It is possible to correct erroneous</p> <p>23 reporting that has happened earlier if you</p> <p>24 have anything you want to add.</p> <p>25 Q Okay.</p> | <p style="text-align: right;">Page 117</p> <p>1 A This one is two out of two, so</p> <p>2 there is a reporting before this.</p> <p>3 Q Turn to page 45 of the Novo Nordisk</p> <p>4 report, please.</p> <p>5 Do you see in the upper right-hand</p> <p>6 corner a chart showing the geographical</p> <p>7 distribution of Novo Nordisk shareholders?</p> <p>8 A Yes.</p> <p>9 Q And you see it shows roughly 30</p> <p>10 percent of shares were held in both 2014 and</p> <p>11 2015 by North American investors?</p> <p>12 A Yes, I see.</p> <p>13 Q Does Denmark have a double taxation</p> <p>14 treaty with Canada?</p> <p>15 A Yes.</p> <p>16 Q Does it have one with Mexico?</p> <p>17 A I have no idea. We have a number</p> <p>18 of double taxation arrangements with a number</p> <p>19 of countries.</p> <p>20 Whether one of them is Mexico, I</p> <p>21 don't know.</p> <p>22 Q Okay. Where would we expect to</p> <p>23 find the dividends issued to North American</p> <p>24 shareholders, including Canadian and</p> <p>25 United States shareholders, on the 3S</p>  |

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| <p style="text-align: right;">Page 134</p> <p>1 for Identification.)</p> <p>2 <b>Q</b> So Mr. Ekstrand, tell me when</p> <p>3 you're there.</p> <p>4 <b>A</b> Yes, I'm there.</p> <p>5 <b>Q</b> Okay. Have you seen this document</p> <p>6 before?</p> <p>7 <b>A</b> Yes.</p> <p>8 <b>Q</b> What is it?</p> <p>9 <b>A</b> This is an early warning on stock</p> <p>10 lending.</p> <p>11 <b>Q</b> Mr. Ekstrand, my understanding was</p> <p>12 that this is a response to an early warning,</p> <p>13 not the early warning itself.</p> <p>14 Do I have that right?</p> <p>15 <b>A</b> Correct.</p> <p>16 <b>Q</b> And the reply comes from the</p> <p>17 Ministry of Taxation, correct?</p> <p>18 <b>A</b> Yes.</p> <p>19 <b>Q</b> And the two early warnings it</p> <p>20 addresses come from within SKAT, right?</p> <p>21 There's a March 27, 2015 warning from the</p> <p>22 large companies division and a July 7, 2015</p> <p>23 warning from the Jura, SKAT's legal</p> <p>24 authority, correct?</p> <p>25 <b>THE INTERPRETER:</b> The second date</p>   | <p style="text-align: right;">Page 135</p> <p>1 is July 7th?</p> <p>2 <b>MR. SCHOENFELD:</b> Correct.</p> <p>3 <b>A</b> Correct.</p> <p>4 <b>Q</b> Did you play any role in drafting</p> <p>5 or approving this reply document?</p> <p>6 <b>A</b> Not at all.</p> <p>7 <b>Q</b> What is an "early warning?"</p> <p>8 <b>A</b> So an early morning is something</p> <p>9 that you prepare if it comes to your</p> <p>10 knowledge that there is the possibility of an</p> <p>11 unforeseen effect of legislation that has</p> <p>12 come into force.</p> <p>13 <b>Q</b> And can you describe, based on your</p> <p>14 familiarity with this document, what the two</p> <p>15 early warnings at issue here were disclosing?</p> <p>16 <b>A</b> So as far as I remembered, there</p> <p>17 were some problematic registrations within</p> <p>18 VP, which means that VP did not necessarily</p> <p>19 report the beneficial owner of the share.</p> <p>20 And, for example, that means that</p> <p>21 if I own shares and then I lend them to you,</p> <p>22 then they will be registered with your</p> <p>23 custodian bank. They will then be</p> <p>24 registered — I will lend them to you.</p> <p>25 They will then be registered with</p> |
| <p style="text-align: right;">Page 136</p> <p>1 your custodian bank and therefore, they will</p> <p>2 be registered as owned by you.</p> <p>3 <b>Q</b> So the upshot of the early warnings</p> <p>4 was that as a result of securities lending in</p> <p>5 the market, SKAT wasn't receiving accurate</p> <p>6 information about who owned securities.</p> <p>7 Is that right?</p> <p>8 <b>MR. WEINSTEIN:</b> Objection to form.</p> <p>9 <b>A</b> Yes. You can say that because VP</p> <p>10 did not have the possibility to check a box</p> <p>11 saying that this was stock lending.</p> <p>12 <b>Q</b> And so the large companies division</p> <p>13 shares this concern on March 27, 2015,</p> <p>14 correct?</p> <p>15 <b>A</b> Yes.</p> <p>16 <b>Q</b> And the response from the Ministry</p> <p>17 of Taxation comes six months later, correct?</p> <p>18 <b>A</b> Yes.</p> <p>19 <b>Q</b> Is anything done in those six</p> <p>20 months to address the issue that the large</p> <p>21 companies division raised?</p> <p>22 <b>A</b> Not to my knowledge, no. But</p> <p>23 the — the answer to this early warning is</p> <p>24 quite clear, which is that you have to be the</p> <p>25 beneficial owner in order to claim a refund.</p> | <p style="text-align: right;">Page 137</p> <p>1 <b>Q</b> So on Page 10 of the reply, do you</p> <p>2 see the paragraph beginning "Som svar?"</p> <p>3 <b>A</b> Yes.</p> <p>4 <b>Q</b> And you see the last sentence of</p> <p>5 the paragraph beginning "Det er?"</p> <p>6 <b>A</b> Yes.</p> <p>7 <b>Q</b> And am I correct that what the</p> <p>8 Ministry is saying there is that it's the</p> <p>9 view of the Ministry of Taxation that in</p> <p>10 situations where the borrower has resold the</p> <p>11 securities in question to a third party, that</p> <p>12 the third party becomes the beneficial owner</p> <p>13 of the dividends?</p> <p>14 <b>A</b> Correct. Exactly as I said</p> <p>15 earlier.</p> <p>16 <b>Q</b> And so that's an accurate statement</p> <p>17 of SKAT's policy towards beneficial ownership</p> <p>18 in these circumstances?</p> <p>19 <b>A</b> This is how the rules are.</p> <p>20 <b>Q</b> SKAT's website says the same thing</p> <p>21 to taxpayers, correct?</p> <p>22 <b>A</b> I don't — I have not seen that for</p> <p>23 myself.</p> <p>24 <b>Q</b> Did you review the website in</p> <p>25 preparation for today's deposition as a</p>   |



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| <p style="text-align: right;">Page 138</p> <p>1 30(b) (6) witness?</p> <p>2 A No.</p> <p>3 Q Okay. Turn to Exhibit 3014 in your</p> <p>4 binder, please.</p> <p>5 (Above-mentioned document marked</p> <p>6 for Identification.)</p> <p>7 Are you there, Mr. Ekstrand?</p> <p>8 A Yes.</p> <p>9 Q Do you recognize this document?</p> <p>10 A Yes.</p> <p>11 Q And you've recognized it as a</p> <p>12 printout of SKAT's website?</p> <p>13 A It looks as if it's something from</p> <p>14 our website.</p> <p>15 Q Okay. And so it lists the five</p> <p>16 requirements for claiming a refund of</p> <p>17 dividend withholding tax, correct?</p> <p>18 A Yes.</p> <p>19 Q And it lists -- if all five</p> <p>20 requirements are satisfied, the shareholder's</p> <p>21 entitled to a refund, correct?</p> <p>22 A Correct.</p> <p>23 Q Today, these are the only</p> <p>24 requirements to be eligible for a refund of</p> <p>25 withholding tax, right?</p>  | <p style="text-align: right;">Page 139</p> <p>1 A So these are the five conditions</p> <p>2 that exist. However, some of them may</p> <p>3 require more documentation than others.</p> <p>4 Q But there are no other substantive</p> <p>5 requirements, correct?</p> <p>6 A No.</p> <p>7 Sorry, correct.</p> <p>8 Q Okay. And these were also the</p> <p>9 requirements for the period 2012 to 2015,</p> <p>10 correct?</p> <p>11 A More or less. The period that we</p> <p>12 are -- in the period that we are discussing,</p> <p>13 we trusted documents that we got from the</p> <p>14 custodian because this was an independent</p> <p>15 third party.</p> <p>16 It turned out, subsequently,</p> <p>17 however, where we were the victims of an</p> <p>18 advanced setup with the participation of the</p> <p>19 custodian. And thus, a dividend credit</p> <p>20 advice is -- as such, is not enough as</p> <p>21 documentation of ownership.</p> <p>22 Q Did you, in your capacity in</p> <p>23 Special Control, reach the conclusion that</p> <p>24 SKAT was the victim of an advanced setup with</p> <p>25 the participation of the custodian?</p> |
| <p style="text-align: right;">Page 140</p> <p>1 A First of all, we were told that</p> <p>2 there was fraud going on in this area from</p> <p>3 international partners, which included both</p> <p>4 pension plan and custodian companies.</p> <p>5 In connection with our</p> <p>6 investigation into this area, we were able to</p> <p>7 determine that the custodian entities were</p> <p>8 also part of the fraud going on.</p> <p>9 Q Are you aware of any facts</p> <p>10 supporting the conclusion that the pension</p> <p>11 plans intended to deceive SKAT as part of the</p> <p>12 advanced setup that you just described?</p> <p>13 A Well, proof as such is something to</p> <p>14 be used in a criminal case. However, we do</p> <p>15 have indications that the pension plans also</p> <p>16 participated, which are apparent from the</p> <p>17 decisions we have made concerning</p> <p>18 cancellation, which is -- which are based on</p> <p>19 the fact that these pension plans are often</p> <p>20 newly-founded companies without the necessary</p> <p>21 funds to make such extensive investments into</p> <p>22 Danish companies.</p> <p>23 Q So you're referring to the -- the</p> <p>24 factual bases for the cancellation of the</p> <p>25 reclaim applications?</p> | <p style="text-align: right;">Page 141</p> <p>1 A Yes. Because that is the work that</p> <p>2 we, as the tax agency, have done in this</p> <p>3 case.</p> <p>4 Q Anything else?</p> <p>5 MR. WEINSTEIN: Objection to form.</p> <p>6 A Not at present.</p> <p>7 Q Going back to the website and the</p> <p>8 five requirements, there's no requirement</p> <p>9 here concerning whether the owner of the</p> <p>10 shares hedged its purchase, correct?</p> <p>11 THE INTERPRETER: I'm sorry. The</p> <p>12 last part again?</p> <p>13 Q Going back to the website and the</p> <p>14 five requirements listed, there's no</p> <p>15 requirement here concerning whether the owner</p> <p>16 of the shares hedged its purchase, correct?</p> <p>17 MR. WEINSTEIN: Objection to form.</p> <p>18 A It doesn't say anything about that,</p> <p>19 no.</p> <p>20 Q And there's no requirement</p> <p>21 concerning whether the owner of the shares</p> <p>22 purchased those shares using financing,</p> <p>23 correct?</p> <p>24 A No, there's nothing in here</p> <p>25 preventing you from being the beneficial</p>  |

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| <p style="text-align: right;">Page 142</p> <p>1 owner if you have hedged your purchase or<br/>2 anything like that.<br/>3 <b>Q</b> And was that SKAT's position<br/>4 between 2012 and 2015?<br/>5 <b>MR. WEINSTEIN:</b> Objection to form.<br/>6 <b>A</b> I have no idea.<br/>7 <b>Q</b> Well, let me -- let me rephrase the<br/>8 question in case it was confusing.<br/>9 In the period 2012 to 2015, SKAT<br/>10 didn't have any policy precluding an investor<br/>11 from being the beneficial owner if the<br/>12 investor had hedged its purchase.<br/>13 Is that correct?<br/>14 <b>MR. WEINSTEIN:</b> Objection to form.<br/>15 <b>A</b> No, nothing like that.<br/>16 <b>Q</b> Is that also true with respect to<br/>17 investors who finance their purchases?<br/>18 <b>MR. WEINSTEIN:</b> Objection to form.<br/>19 <b>A</b> As the investor has entered into a<br/>20 binding legal agreement on the purchase,<br/>21 however he can pay for that purchase, we<br/>22 have -- we have no opinion on that.<br/>23 <b>THE INTERPRETER:</b> Just hold on one<br/>24 second.<br/>25 <b>A</b> As long as -- however you have</p> | <p style="text-align: right;">Page 143</p> <p>1 acquired the share, whether by hedging or<br/>2 whether by whatever financing, that has<br/>3 nothing to do with whether or not you are the<br/>4 beneficial owner.<br/>5 <b>Q</b> When you buy yourself securities,<br/>6 you understand that there's a trade date and<br/>7 a settlement date, correct?<br/>8 <b>A</b> Yes.<br/>9 <b>Q</b> And what do each of those dates<br/>10 represent?<br/>11 <b>A</b> So the trade date is the day the<br/>12 security is traded. The settlement date is<br/>13 the date that the -- that the deal is<br/>14 finished, where the security is -- it comes<br/>15 to your custodian.<br/>16 <b>Q</b> So on the trade date -- oh, I<br/>17 apologize. Please go ahead.<br/>18 <b>A</b> Just -- the settlement date is the<br/>19 day when the trade is final where the shares<br/>20 go from one custodian to another.<br/>21 <b>Q</b> Okay. And on the trade date, does<br/>22 anything happen other than an agreement being<br/>23 entered into and confirmations exchanged?<br/>24 <b>A</b> Well, you could have payment on<br/>25 that day, but I imagine that payment would</p> |
| <p style="text-align: right;">Page 144</p> <p>1 take place on the settlement date.<br/>2 <b>Q</b> Are any book entries made on the<br/>3 trade?<br/>4 <b>MR. WEINSTEIN:</b> Objection to the<br/>5 form.<br/>6 <b>A</b> Actually, I don't remember at this<br/>7 time, but it is not registered with the<br/>8 custodian. That is not until the settlement<br/>9 date.<br/>10 That's when the shares move from<br/>11 one to the other.<br/>12 <b>Q</b> Must the seller of the shares have<br/>13 the shares on the trade date?<br/>14 <b>MR. WEINSTEIN:</b> Objection to form.<br/>15 <b>A</b> Not necessarily.<br/>16 <b>Q</b> To be entitled to a refund for a<br/>17 dividend withholding tax, did SKAT require<br/>18 there to be a certain number of days between<br/>19 trade date and settlement date?<br/>20 <b>A</b> So no. But in order to be entitled<br/>21 to dividend, you have to be the beneficial<br/>22 owner and the -- the agreement has to be<br/>23 made, at the latest, on the -- at the latest,<br/>24 on the date of the general meeting.<br/>25 <b>Q</b> So if the shares are purchased on</p>                | <p style="text-align: right;">Page 145</p> <p>1 or before the date of the annual general<br/>2 meeting, the purchaser's entitled to the<br/>3 dividend declared at that meeting.<br/>4 Is that right?<br/>5 <b>THE INTERPRETER:</b> So could you<br/>6 repeat that?<br/>7 <b>MR. SCHOENFELD:</b> Yes.<br/>8 <b>Q</b> So if the shares are purchased on<br/>9 or before the date of the annual general<br/>10 meeting, the purchaser's entitled to the<br/>11 dividend declared at that meeting.<br/>12 Is that right?<br/>13 <b>MR. WEINSTEIN:</b> Objection to form.<br/>14 <b>A</b> As long as a legal, binding<br/>15 agreement has been made on the purchase and<br/>16 payment, then yes.<br/>17 <b>Q</b> So if the trade date is before the<br/>18 date of the annual general meeting?<br/>19 <b>A</b> That is not important as long as<br/>20 he's the beneficial owner of the share on the<br/>21 day of the general meeting.<br/>22 <b>Q</b> Was SKAT's understanding that if<br/>23 the seller of shares receives a dividend on<br/>24 the dividend payment date, it can pass that<br/>25 dividend along to the purchaser?</p>                                   |



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| <p style="text-align: right;">Page 232</p> <p>1       <b>Q</b>     In order to conduct this</p> <p>2     investigation, did you have to learn about</p> <p>3     aspects of the securities market and</p> <p>4     securities trading?</p> <p>5       <b>MR. WEINSTEIN:</b>   Objection to the</p> <p>6     form.</p> <p>7       <b>A</b>     Obviously, we have gone through</p> <p>8     various kinds of information about dealing</p> <p>9     with shares in general.</p> <p>10       But fundamentally, this is a case</p> <p>11     that is all about whether or not you are the</p> <p>12     beneficial owner of the shares where you are</p> <p>13     attempting to claim a refund, and not so much</p> <p>14     about how you got to that.</p> <p>15       <b>Q</b>     Did anyone within SKAT educate you</p> <p>16     about this concept of beneficial ownership so</p> <p>17     that you could conduct the investigation?</p> <p>18       <b>A</b>     No, there was not. But within our</p> <p>19     group we have collected a lot of information</p> <p>20     about this issue. We have reached a common</p> <p>21     or general understanding of what this</p> <p>22     entails.</p> <p>23       <b>Q</b>     And what was that based on?</p> <p>24       <b>A</b>     Well, based on the information that</p> <p>25     we were able to collect about dealing with</p>           | <p style="text-align: right;">Page 233</p> <p>1     shares, obviously we have reviewed that</p> <p>2     information.</p> <p>3       As I said before, it's all about</p> <p>4     being able to document that you are the</p> <p>5     beneficial owner for the shares when you're</p> <p>6     attempting to obtain a refund, which means</p> <p>7     that you need to have ownership of the</p> <p>8     dividend and ownership of the shares.</p> <p>9       <b>Q</b>     Do you recall consulting any</p> <p>10     written documents to educate yourself about</p> <p>11     the concept of beneficial ownership in the</p> <p>12     course of your investigation?</p> <p>13       <b>A</b>     So I can't remember specific</p> <p>14     sources that I consulted, but what this is</p> <p>15     all about, it's having valid -- having valid</p> <p>16     sources.</p> <p>17       <b>Q</b>     Well, let me ask the question a</p> <p>18     different way.</p> <p>19       Where did your definition of</p> <p>20     "beneficial ownership" come from for purposes</p> <p>21     of this investigation?</p> <p>22       <b>A</b>     So if you are looking to reclaim</p> <p>23     dividend tax because you are covered by a</p> <p>24     double taxation agreement, you need to be the</p> <p>25     beneficial owner of the share that you're</p> |
| <p style="text-align: right;">Page 234</p> <p>1     seeking to reclaim tax for. And as we</p> <p>2     discussed yesterday, we have within SKAT</p> <p>3     legal guidelines describing the concept of</p> <p>4     "beneficial owner."</p> <p>5       But I'm not the right person to ask</p> <p>6     about details of the legal definition.</p> <p>7       <b>Q</b>     My question isn't about the details</p> <p>8     of the legal definition.</p> <p>9       Is there a physical document called</p> <p>10     "Legal Guidelines" or something like that</p> <p>11     that includes the definition, "beneficial</p> <p>12     ownership?"</p> <p>13       <b>A</b>     To my recollection, there are legal</p> <p>14     guidelines describing what is needed in order</p> <p>15     to constitute the beneficial owner.</p> <p>16       <b>Q</b>     Focusing on the period</p> <p>17     June/July/August 2015, do you recall anyone</p> <p>18     in the course of this investigation</p> <p>19     indicating that they had previously heard</p> <p>20     concerns relating to the issue of false or</p> <p>21     fraudulent dividend withholding tax reclaims?</p> <p>22       <b>MR. WEINSTEIN:</b>   Objection to form.</p> <p>23       <b>A</b>     No.</p> <p>24       <b>Q</b>     Did Dorthe Madsen ever say in June,</p> <p>25     July, August 2015 that, the year before, she</p> | <p style="text-align: right;">Page 235</p> <p>1     had observed an enormous increase in dividend</p> <p>2     tax withholding reclaims attributable to U.S.</p> <p>3     pension plans?</p> <p>4       <b>A</b>     No.</p> <p>5       <b>Q</b>     At some point in your investigation</p> <p>6     did you learn that there was a series of</p> <p>7     memos, Problemkatalog, and audit reports that</p> <p>8     addressed issues related to dividend</p> <p>9     withholding tax reclaims?</p> <p>10       <b>MR. WEINSTEIN:</b>   Objection to form.</p> <p>11       <b>A</b>     No. My job was to verify the</p> <p>12     reality of the information that we had</p> <p>13     received and determine whether there were any</p> <p>14     truth to these allegations and to determine</p> <p>15     whether potentially there was a fraud case in</p> <p>16     this -- within this area.</p> <p>17       <b>Q</b>     You're aware now that those</p> <p>18     documents that I just referenced exist,</p> <p>19     correct?</p> <p>20       <b>A</b>     Yes.</p> <p>21       <b>Q</b>     How did you become aware of those</p> <p>22     documents?</p> <p>23       <b>A</b>     I became aware of those</p> <p>24     subsequently.</p> <p>25       <b>Q</b>     How?</p>   |

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| <p style="text-align: right;">Page 236</p> <p>1       <b>A</b>    Among other things, in my<br/>2 preparation for this.<br/>3       <b>Q</b>    Prior to your preparation for this<br/>4 deposition, had you been aware of the<br/>5 existence of these documents?<br/>6       <b>MR. WEINSTEIN:</b> Objection to form.<br/>7 You've asked about a bunch of different<br/>8 documents, so it's -- can you be more<br/>9 specific?<br/>10       <b>Q</b>    I'm referring to memos,<br/>11 Problemkatalog, and audit reports concerning<br/>12 issues relating to dividend withholding tax?<br/>13       <b>MR. WEINSTEIN:</b> So is the question<br/>14 whether he saw any of them prior to his<br/>15 preparation, or all of them? What is the<br/>16 question?<br/>17       <b>MR. SCHOENFELD:</b> Let's start with<br/>18 any of them.<br/>19       <b>Q</b>    Had you seen any of those documents<br/>20 prior to your preparation for this<br/>21 deposition?<br/>22       <b>A</b>    Yes.<br/>23       <b>Q</b>    Which of them?<br/>24       <b>A</b>    You have to show me ones that<br/>25 you're referring to and then I can tell you</p>               | <p style="text-align: right;">Page 237</p> <p>1 whether I've seen it or not. Because I've<br/>2 seen a bunch of documents.<br/>3       <b>Q</b>    Is it fair to say that SKAT was<br/>4 warned about deficiencies in its dividend<br/>5 withholding tax refund process prior to June<br/>6 of 2015?<br/>7       <b>MR. WEINSTEIN:</b> Objection to the<br/>8 form.<br/>9       <b>A</b>    So what do you mean? And what<br/>10 witnesses are you referring to?<br/>11       <b>Q</b>    Are you aware of warnings about any<br/>12 weaknesses in the dividend withholding tax<br/>13 refund process prior to June of 2015?<br/>14       <b>A</b>    So prior to 2015, as far as I know,<br/>15 there are numerous reports describing this<br/>16 issue.<br/>17       But is there a specific one you<br/>18 would like for us to review?<br/>19       <b>Q</b>    We're going to review them. I'm<br/>20 just trying to ask about your recollection.<br/>21       Do you know when the earliest of<br/>22 these reports describing this issue was<br/>23 generated within SKAT?<br/>24       <b>MR. WEINSTEIN:</b> Objection to form<br/>25 and what this issue is.</p>   |
| <p style="text-align: right;">Page 238</p> <p>1       <b>MR. SCHOENFELD:</b> He just testified<br/>2 that there are numerous reports describing<br/>3 this issue. So I'm using his words and<br/>4 asking him what he meant.<br/>5       <b>A</b>    I think that they are all reports<br/>6 going back as far as 2000.<br/>7       <b>Q</b>    And as part of your<br/>8 investigation -- well, I take that back.<br/>9       All right. Let's look at<br/>10 Exhibit 3002.<br/>11       (Above-mentioned document marked<br/>12 for Identification.)<br/>13       <b>Q</b>    Do you have that document in front<br/>14 of you?<br/>15       <b>A</b>    Yes. Yes.<br/>16       <b>Q</b>    Have you seen this document before?<br/>17       <b>A</b>    Let me get this review. I don't<br/>18 think I've seen this exact document before.<br/>19       I mean, I don't remember.<br/>20       <b>Q</b>    Did you review this document in<br/>21 preparation for this deposition?<br/>22       <b>A</b>    Maybe, but I can't remember.<br/>23       <b>Q</b>    This is an audit record from SIR,<br/>24 correct?<br/>25       <b>A</b>    It looks like it.</p> | <p style="text-align: right;">Page 239</p> <p>1       <b>Q</b>    And what is SIR?<br/>2       <b>A</b>    So it is SKAT's internal audit.<br/>3       <b>Q</b>    And what are SIR's<br/>4 responsibilities?<br/>5       <b>A</b>    So as far as I can remember, they<br/>6 are part of the Ministry's supervision with<br/>7 SKAT and they carry out various forms of<br/>8 investigations into -- they carry out various<br/>9 investigations into SKAT's business areas.<br/>10       <b>Q</b>    Okay. So this audit report makes<br/>11 certain observations about the administration<br/>12 of dividend withholding tax, correct?<br/>13       <b>A</b>    Correct.<br/>14       <b>Q</b>    And so, for example, in<br/>15 Paragraph 11 on Page 4, SIR observes that<br/>16 "it's not satisfactory that it's possible for<br/>17 dividend recipients to receive dividend tax<br/>18 even if the company paying the dividend has<br/>19 not paid the withheld dividend tax to SKAT,"<br/>20 correct?<br/>21       <b>A</b>    Yes.<br/>22       <b>Q</b>    And that remained true in the<br/>23 period January 2012 to August 2015, correct?<br/>24       <b>THE INTERPRETER:</b> January?<br/>25 I'm sorry.</p> |

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| <p>1 A I've never met her myself, but<br/>2 she's been the head of Accounts 2 for a long<br/>3 period. She had retired when I had this case<br/>4 assigned.<br/>5 Q Okay. Do you know whether she<br/>6 played any role in drafting the<br/>7 Problemkatalog?<br/>8 A She did.<br/>9 Q Do you know whether anyone else<br/>10 played a role in drafting the Problemkatalog?<br/>11 A As far as I remember, several names<br/>12 are mentioned in the Problemkatalog.<br/>13 Q Do you recall anyone else<br/>14 that — any other names?<br/>15 A Not right now, no.<br/>16 Q Have you ever — is the term<br/>17 "Problemkatalog" used within SKAT apart from<br/>18 this document?<br/>19 MR. WEINSTEIN: Objection to form.<br/>20 A I have no knowledge of having seen<br/>21 other Problemkatalogs.<br/>22 Q Do you know who this Problemkatalog<br/>23 was sent to?<br/>24 A No.<br/>25 Q Do you know whether any remedial</p> | <p>1 measures were taken as a result of the<br/>2 Problemkatalog?<br/>3 A I think that we would need to<br/>4 review the Problemkatalog in order to<br/>5 determine what the desired measures were,<br/>6 measures as in remedial action.<br/>7 Q Well, so, for example, one of the<br/>8 things the Problemkatalog proposes on Page 20<br/>9 is "stricter documentation requirements for<br/>10 refund of Danish dividend tax concerning the<br/>11 ownership of the shares."<br/>12 Do you see that?<br/>13 MR. WEINSTEIN: He has 2006 in<br/>14 front of him, the audit report.<br/>15 Q Oh, sorry. So Exhibit 3052 is the<br/>16 Problemkatalog.<br/>17 (Above-mentioned document marked<br/>18 for Identification.)<br/>19 MR. WEINSTEIN: We're probably<br/>20 approaching a break time.<br/>21 MR. SCHOENFELD: Okay. Let's take<br/>22 a break now and we can return to this.<br/>23 VIDEO OPERATOR: Please stand by.<br/>24 The time is 8:15 a.m. New York time and we're<br/>25 going off the record.</p>  |
| Page 246   | Page 247  |
| <p>1 (Brief recess taken.)<br/>2 VIDEO OPERATOR: The time is<br/>3 8:27 a.m. New York time and we're back on<br/>4 record.<br/>5 Q Mr. Ekstrand, do you have<br/>6 Exhibit 3052, the Problemkatalog, in front of<br/>7 you?<br/>8 A I do.<br/>9 Q Okay. So referring to the Bates<br/>10 numbers in the bottom right hand corner, I'm<br/>11 on page 517935.<br/>12 THE INTERPRETER: Page what?<br/>13 79-what?<br/>14 MR. SCHOENFELD: 517935.<br/>15 A Yes.<br/>16 Q And so in the paragraph beginning<br/>17 K-O-N-K-R-E-T, Ms. Rømer is proposing<br/>18 stricter documentation requirements to<br/>19 establish ownership of shares for purposes of<br/>20 refund of Danish dividend tax, correct?<br/>21 A That's what it says, yes.<br/>22 Q Between 2006 and 2012, did SKAT<br/>23 produce any stricter documentation<br/>24 requirements to establish ownership?<br/>25 A So this is referring to nominee and</p>        | <p>1 omnibus custodians. Denmark, during this<br/>2 period, make requirements ordering a<br/>3 stricter — established stricter requirements<br/>4 to these omnibus custodians.<br/>5 I think that at the time, or just<br/>6 shortly after this, there was a project<br/>7 called "Trace."<br/>8 MR. SCHOENFELD: Can I pause you<br/>9 for a second? I just lost everything after<br/>10 "project called Trace."<br/>11 A So the project "Trace" was that<br/>12 several European countries and international<br/>13 banks got together in order to find a way or<br/>14 model which could be net clearance. So I<br/>15 said "net clearance," but net settlement.<br/>16 But they would get together in<br/>17 order to attempt to deal with these omnibus<br/>18 accounts, which would make requirements of<br/>19 the shareholder concerning registration with<br/>20 whatever — back where you have your omnibus<br/>21 custodian, but this work was on the way for<br/>22 several years. They have yet to reach a<br/>23 solution.<br/>24 This requires that everywhere in<br/>25 the world, also in the U.S., that this</p> |

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| <p style="text-align: right;">Page 248</p> <p>1 happens. It was not possible for them alone<br/>2 to strengthen requirements in this area.<br/>3 So in my understanding, we have<br/>4 accepted this, but Trace is -- nothing came<br/>5 of it.<br/>6 Q Did SKAT itself adopt any stricter<br/>7 requirements to establish shareholding<br/>8 between 2006 and 2012?<br/>9 THE INTERPRETER: Can I ask you to<br/>10 repeat the question?<br/>11 Q Did SKAT itself adopt any stricter<br/>12 requirements to establish shareholding<br/>13 between 2006 and 2012?<br/>14 A No. As far as I know, the<br/>15 requirement also exists at the time, which<br/>16 means where you fill out a form stating that<br/>17 you are the beneficial owner -- I've<br/>18 mentioned this a number of times -- you<br/>19 enclose documentation regarding your domicile<br/>20 and cases where you pay taxes.<br/>21 Also, you enclose third-party<br/>22 documentation stating that you have shares<br/>23 with the custodian and it is for these shares<br/>24 that you are attempting to reclaim dividend<br/>25 tax.</p>     | <p style="text-align: right;">Page 249</p> <p>1 Q Do you know where there was any<br/>2 official response to the Problemkatalog after<br/>3 it was written in 2006?<br/>4 A I do not know.<br/>5 Q Let's turn to document 3003.<br/>6 (Above-mentioned document marked<br/>7 for Identification.)<br/>8 Q Have you seen this document before?<br/>9 A Yes.<br/>10 Q Did you see it in preparation for<br/>11 your deposition?<br/>12 A Yes.<br/>13 Q Have you seen it prior to your<br/>14 preparation for your deposition?<br/>15 A I don't think so.<br/>16 Q So this is a SIR report from 2010<br/>17 concerning withholding tax on foreign<br/>18 shareholders dividend tax, correct?<br/>19 A Yes.<br/>20 Q When an audit report like this is<br/>21 generated from SIR, what's the ordinary<br/>22 process after the report is issued?<br/>23 A So, in general, the report is sent<br/>24 to SKAT and we have one-channel reception for<br/>25 reports. And I'm unsure of the name of that</p>   |
| <p style="text-align: right;">Page 250</p> <p>1 unit.<br/>2 But then, once received, it will be<br/>3 forwarded to the correct business area, to<br/>4 the deputy directors within that area, and<br/>5 they then can consequently decide what needs<br/>6 to happen.<br/>7 Q And is there a process for ensuring<br/>8 or confirming that necessary follow-up is<br/>9 taken with respect to audit reports?<br/>10 A So my understanding is that it is<br/>11 up to the relevant business unit or business<br/>12 areas. It is up to them to decide whether<br/>13 any follow-up is needed for whatever issues.<br/>14 Q Okay. So on the first page, in the<br/>15 first paragraph, SIR identifies a problem in<br/>16 that it's possible that too much withholding<br/>17 taxes were refunded via the so-called refund<br/>18 scheme.<br/>19 Do you see that?<br/>20 MR. WEINSTEIN: Objection to form.<br/>21 A What it says here is that they<br/>22 cannot rule out that there are too many<br/>23 refunds under the refund of withholding tax<br/>24 scheme.<br/>25 Q So what's your understanding of the</p> | <p style="text-align: right;">Page 251</p> <p>1 problem that SIR is identifying?<br/>2 MR. WEINSTEIN: Objection to form.<br/>3 A Which problem are you referring to?<br/>4 Q Well, what's your understanding of<br/>5 SIR's observation in that first paragraph?<br/>6 What issue are they addressing in this<br/>7 report?<br/>8 MR. WEINSTEIN: Objection to form.<br/>9 A I just need to review the text.<br/>10 (Witness reviewing.)<br/>11 So, to my understanding, this<br/>12 refers to the fact that we have two refund<br/>13 schemes. We have the form scheme and we have<br/>14 the bank scheme.<br/>15 Under the form scheme, we are very<br/>16 fine, what we have discussed previously, that<br/>17 the conditions are met in connection with the<br/>18 documentation that we submitted.<br/>19 In the meantime, there's a bank<br/>20 scheme that has been put in place where the<br/>21 bank sends a spreadsheet containing<br/>22 information, but not necessarily<br/>23 documentation. Just information about a<br/>24 refund to be paid.<br/>25 So, to my understanding, the</p> |

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19 (Pages 252 to 255)

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| <p style="text-align: right;">Page 252</p> <p>1 problem is that there was no -- the problem</p> <p>2 was that the bank scheme and the form scheme</p> <p>3 did not correspond, which means that you</p> <p>4 could have an application under the</p> <p>5 spreadsheet scheme that also had been</p> <p>6 submitted under the form scheme.</p> <p>7 That was how I understood it.</p> <p>8 Q On Page 12 of the report, SIR makes</p> <p>9 certain findings, right?</p> <p>10 A Yes.</p> <p>11 Q So starting at the bottom, SIR</p> <p>12 finds that "previous investigations initiated</p> <p>13 by SKAT have not been followed up on,"</p> <p>14 correct?</p> <p>15 A Correct.</p> <p>16 Q Did SKAT agree with that finding?</p> <p>17 A I have no knowledge about that.</p> <p>18 Q What do you mean you have no</p> <p>19 knowledge about that fact?</p> <p>20 A I have no knowledge about whether</p> <p>21 there was no follow-up on previous reports</p> <p>22 made.</p> <p>23 Q Well, did you do anything to</p> <p>24 educate yourself about that finding or SKAT's</p> <p>25 follow-up on previous investigations?</p>                                  | <p style="text-align: right;">Page 253</p> <p>1 A No. I have referred to what the</p> <p>2 report says.</p> <p>3 Q In the bullet above that, it says,</p> <p>4 "SIR finds that there are no checks in</p> <p>5 connections with refund requests as to</p> <p>6 whether the investor is actually a</p> <p>7 shareholder and whether the investor is, in</p> <p>8 fact, liable for tax in Denmark or not."</p> <p>9 Was that accurate as of 2010?</p> <p>10 A I wouldn't say so, no.</p> <p>11 Q Why not?</p> <p>12 A So there was a process in place and</p> <p>13 we've discussed that several times. When we</p> <p>14 submit an application, or when we receive an</p> <p>15 application, first we review whether it's in</p> <p>16 compliance with the conditions.</p> <p>17 That is already when mail is</p> <p>18 opened, where their applications are divided</p> <p>19 into two parts. Subsequently, we go through</p> <p>20 whether the application complies with the</p> <p>21 criterias for being awarded a refund.</p> <p>22 I -- whether the form has been</p> <p>23 printed and signed, whether a certificate</p> <p>24 from the domicile is included, and whether a</p> <p>25 dividend credit advice has been included from</p> |
| <p style="text-align: right;">Page 254</p> <p>1 a third party, and whether this matches the</p> <p>2 application submitted before this is inputted</p> <p>3 into the system.</p> <p>4 So there are checks in place.</p> <p>5 Q The purpose of that process was to</p> <p>6 confirm that a shareholder was</p> <p>7 the then -- sorry.</p> <p>8 The purpose of that process was to</p> <p>9 confirm that a dividend withholding tax</p> <p>10 applicant was the beneficial owner of the</p> <p>11 dividend, correct?</p> <p>12 A Yes.</p> <p>13 Q And SIR is observing here that</p> <p>14 there -- that in its view, there are</p> <p>15 deficiencies in that process, correct?</p> <p>16 MR. WEINSTEIN: Objection to form.</p> <p>17 Asked and answered.</p> <p>18 A No, I do not think that's what</p> <p>19 they're doing. Maybe they're referring to</p> <p>20 the spreadsheet scheme where we do not</p> <p>21 perform this control.</p> <p>22 Q Do you know whether, in response to</p> <p>23 the findings in this audit report, SIR spoke</p> <p>24 with anyone in Accounting 2 and shared its</p> <p>25 observations about the process for dividend</p> | <p style="text-align: right;">Page 255</p> <p>1 withholding tax refunds?</p> <p>2 A No.</p> <p>3 Q A working group was established</p> <p>4 following the issuance of this audit report,</p> <p>5 correct?</p> <p>6 A A working group was established at</p> <p>7 some point, yes.</p> <p>8 Q Do you know whether it was in</p> <p>9 response to this audit report?</p> <p>10 A No.</p> <p>11 Q And so I take it you don't know</p> <p>12 what that working group -- well, do you know</p> <p>13 what that working group did, if anything, in</p> <p>14 response to the findings of the 2010 audit</p> <p>15 report?</p> <p>16 A I don't remember. But if there's a</p> <p>17 memo to that effect, let's review it.</p> <p>18 Q Are you aware of a 2016 report by</p> <p>19 the Rigsrevisionen?</p> <p>20 A Yes.</p> <p>21 Q And how are you familiar with that</p> <p>22 report?</p> <p>23 A I have read it.</p> <p>24 Q Did you read it in preparation for</p> <p>25 this deposition?</p>   |



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21 (Pages 260 to 263)

| Page 260  | Page 261  |
|---|---|
| <p>1 A Yes.</p> <p>2 Q And Lisbeth Rømer is writing about</p> <p>3 the same concerns in 2011, correct?</p> <p>4 A And what problem specifically are</p> <p>5 you referring to?</p> <p>6 Q This problem of reconciliation.</p> <p>7 A Yes.</p> <p>8 Q And legislation is passed in 2012</p> <p>9 to address that issue.</p> <p>10 Is that correct?</p> <p>11 A Yes.</p> <p>12 Q And it becomes effective for large</p> <p>13 companies in 2013, correct?</p> <p>14 A Well, listed companies.</p> <p>15 Q Sorry. Listed companies.</p> <p>16 A Yes.</p> <p>17 Q The next document is another</p> <p>18 warning from Lisbeth Rømer from October of</p> <p>19 2011.</p> <p>20 MR. WEINSTEIN: Objection to form.</p> <p>21 MR. SCHOENFELD: This is</p> <p>22 Exhibit 3004.</p> <p>23 (Above-mentioned document marked</p> <p>24 for Identification.)</p> <p>25 Q Mr. Ekstrand, do you have that</p>  | <p>1 document in front of you?</p> <p>2 A Yes.</p> <p>3 Q Do you see in the last sentence of</p> <p>4 the document, Ms. Rømer refers to the</p> <p>5 possibility of fraud with respect to dividend</p> <p>6 withholding tax refunds?</p> <p>7 A Yes.</p> <p>8 Q And she explains earlier in the</p> <p>9 document, at the bottom of the second page,</p> <p>10 that one of her concerns about fraud is that</p> <p>11 SKAT doesn't know a foreign dividend</p> <p>12 recipient and may, therefore, refund dividend</p> <p>13 withholding tax to the wrong person.</p> <p>14 Is that right?</p> <p>15 MR. WEINSTEIN: Objection to the</p> <p>16 form.</p> <p>17 A Well, that risk, you can say, is</p> <p>18 always present.</p> <p>19 Q How is it always present?</p> <p>20 A Well, if you submit that</p> <p>21 documentation, we will refund to the</p> <p>22 incorrect individual.</p> <p>23 What she says here is that she</p> <p>24 wants a net principal where all share owners</p> <p>25 are to be registered. This is a method that</p> |
| Page 262  | Page 263  |
| <p>1 has been an attempt to put into place for</p> <p>2 many years, as we mentioned earlier with the</p> <p>3 Trace project.</p> <p>4 And this project cannot be</p> <p>5 fulfilled, cannot be carried out. Because in</p> <p>6 actuality, what it means is that a foreign</p> <p>7 share owner who wants to trade shares in</p> <p>8 Denmark will need to have a bank account in</p> <p>9 Denmark, and if he were to trade shares in</p> <p>10 Germany, he would need a bank account in</p> <p>11 Germany, and so on, and so forth.</p> <p>12 They have yet to be able to produce</p> <p>13 such a model.</p> <p>14 Q So you mentioned earlier that Trace</p> <p>15 project.</p> <p>16 Other than Denmark's participation</p> <p>17 in the Trace project, are you aware of any</p> <p>18 particular remedial measures that were taken</p> <p>19 in response to Ms. Rømer's October 4, 2011</p> <p>20 memo?</p> <p>21 A As far as I know, this was the only</p> <p>22 option we had to enter into a collaboration</p> <p>23 with other European countries to do this.</p> <p>24 Q Okay. You can set that exhibit</p> <p>25 aside. I'd like you now to turn to</p> | <p>1 Exhibit 3009.</p> <p>2 (Above-mentioned document marked</p> <p>3 for Identification.)</p> <p>4 Q Have you seen this document before?</p> <p>5 A Yes.</p> <p>6 Q In the course of preparation for</p> <p>7 this deposition?</p> <p>8 A Yes.</p> <p>9 Q Have you reviewed it prior to this</p> <p>10 deposition?</p> <p>11 A No.</p> <p>12 Q It's addressed to Jens Brøchner.</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q And are you aware that Mr. Brøchner</p> <p>16 has testified before the parliamentary</p> <p>17 commission that he never received this memo?</p> <p>18 A Yes, I think I've read that.</p> <p>19 Q If you look at Page 15 of the</p> <p>20 memo —</p> <p>21 A Yes.</p> <p>22 Q — there's a chart showing a number</p> <p>23 of particular recommendations that SIR is</p> <p>24 making for administration of the dividend</p> <p>25 withholding tax.</p>   |